

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Nos. 19-190-12
)	
CURTIS SAXTON-SMITH)	

Order on Motion for Sentencing Transcript

Presently before the Court is Defendant Curtis Saxton-Smith's Motion seeking a copy of his Sentencing Transcript to assist him in filing a Motion to Vacate, Set Aside, or Correct a Sentence pursuant to 28 U.S.C. § 2255. ECF No. 1064. Relevant to Mr. Saxton-Smith's request for a transcript is 28 U.S.C. § 753(f), which states in relevant part:

Fees for transcripts furnished in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

28 U.S.C. § 753(f). "Although [Mr. Saxton-Smith] indicates that he needs the transcript in order to prepare a § 2255 petition, the statute applies only after such a proceeding has been instituted." United States v. Smith, 2010 WL 11534344, *1 (W.D. Pa. 2010). Therefore, Mr. Saxton-Smith is not entitled to a transcript free of cost until he has, at a minimum, filed a section 2255 motion.

Once a 2255 motion is filed and a request for a transcript has been made, the petitioner must also obtain certification from a Court "that the motion is not frivolous and that the transcript is needed to decide the issue presented." United States v. Francisco, 342 Fed. App'x 828, 829 (3rd Cir. 2009). At this point no Petition has been filed, and thus Mr. Saxton-Smith has not advanced any claims for the Court to evaluate.

Accordingly, this 19th day of September 2022, Mr. Saxton-Smith's Motion for Transcript is DENIED without prejudice.

The Clerk of Court is directed to provide Mr. Saxton-Smith with a 28 U.S.C. § 2255 form.

s/Marilyn J. Horan
Marilyn J. Horan
United States District Court Judge

cc: Curtis Saxton-Smith
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